

# STANDARD APPLICATION

## Harford County Board of Appeals

Bel Air, Maryland 21014

Case No. 5458  
Date Filed 10/29/04  
Hearing Date \_\_\_\_\_  
Fee \$ 1450.00

CASE 5458 MAP 44 TYPE Variance

ELECTION DISTRICT 02 LOCATION SS of Gravel Hill Road, Par 439 & 457

Shaded Areas BY Maryland Reclamation Associates, Inc.

### Type of Application

- ☐ Administrative Decision/Interpretation  
☐ Special Exception  
☐ Use Variance  
☐ Change/Extension of Non-Conforming Use  
☐ Minor Area Variance  
☐ Area Variance  
☐ Variance from Requirements of the Code

Appealed because a variance pursuant to Sec. 267-28C to permit the disturbance of the 30' buffer yard; Sec. 267-28D(4); and E to permit disturbance within the 200' buffer from adjoining property lines; and to permit disturbance within the 75' Historic Landmark buffer; Sec. 267-40.1A,B,C and D to permit operation of a rubble landfill on less than 100 acres; and to permit operation of a landfill without satisfying buffer requirement; and to permit the deposit of solid waste less than 500' from the Floodplain District; and to permit the disturbance of the 1000' buffer from a residential or institutional building; Sec. 267-41.D(2)(c);(3)(b);(5)(e);(6) to permit the use of a landfill within the NRD; to permit the disturbance of the NRD buffer; and the disturbance of the minimum 75' wetlands buffer in the Ag District requires approval by the Board.

**NOTE:** A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park, Special Exceptions for junk yards, mineral extractions, apartments and airports.

### Applicant

Name MARYLAND RECLAMATION ASSOCIATES, INC. Phone Number 443-801-7647  
Address Post Office Box 451 Churchville, MD 21028  
*Street Number Street City State Zip Code*

Property Owner MARYLAND RECLAMATION ASSOCIATES, INC. Phone Number 443-801-7647  
Address Post Office Box 451 Churchville, MD 21028  
*Street Number Street City State Zip Code*

Contract Purchaser \_\_\_\_\_ Phone Number \_\_\_\_\_  
Address \_\_\_\_\_  
*Street Number Street City State Zip Code*

Attorney/Representative William D. Hooper, Jr. Phone Number (410) 879-8030  
Hooper & Jacobs, LLC  
Address 125 N. Main Street, P.O. Box 400 Bel Air, MD 21014  
*Street Number Street City State Zip Code*  
James Nolan, Council, Baradel, Kosmerl & Nolan  
125 West Street, P.O. Box 2289, Annapolis, MD 21404  
(410) 269-6190

## Land Description

Address and Location of Property South side of Gravel Hill Road 0.7 miles south of Maryland Route 155  
and approximately 0.6 miles east of Maryland Route 462, in Harford County.

Subdivision None Lot Number None

Acreage/Lot Size 68.33 Election District Second Zoning AG

Tax Map No. 44 Grid No. 2A & 2B Parcel 439,457 Water/Sewer: Private X Public

List ALL structures on property and current use: Rubble landfill, extraction of bank sand and bank run  
gravel, not structures currently on site.

Estimated Time Requested to Present Case: approximately 3 sessions before Hearing Examiner for the  
applicant's case.

If this Appeal is in reference to a Building Permit, state number n/a

Would approval of this petition violate the covenants and restrictions for your property? no

Is this property located within the County's Chesapeake Bay Critical Area? Yes  No X

If so, what is the Critical Area Land Use designations: n/a

Is this request the result of a zoning enforcement investigation? Yes  No X

## Request

See attached "Requests"

## Justification

See attached "Justification"

*If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval requested. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)*

## **Gravel Hill Rubble Fill Variances**

### **Request**

By decision dated April 2, 2002, the Zoning hearing Examiner for Harford County found that Bill 91-10 can validly be applied to the property designated for a rubble landfill by Maryland Reclamation Associates, Inc. ("MRA"). The Zoning Hearing Examiner's decision was adopted in full by the Harford County Board of Appeals on June 11, 2002 and the Board's decision was duly appealed to the Maryland Court of Appeals. In its July 30, 2004 Opinion in Maryland Reclamation Associates, Inc. v. Harford County, Maryland, the Maryland Court of Appeals stated that "before it may prosecute its petition for judicial review in this matter, MRA must apply for the zoning variances assertedly needed to obtain relief from Bill 91-10." MRA is thus seeking variances from the application of the provisions of Bill 91-10 to its property. MRA does so without prejudice to argue that Harford County is not legally permitted to apply the provisions of Bill 91-10 (nor subsequently enacted zoning ordinances which have the effect of prohibiting MRA from opening and operating its rubble landfill) to its proposed rubble landfill for the reasons set forth in the above-referenced appeal.

MRA is requesting the variances from the Harford County Zoning Code to construct and operate a rubble landfill on the property depicted on Tax Map 44 as Parcels 439 and 457. MRA is also requesting variances from the sections of the Zoning Code noted in the letter from Joseph Kocy, dated February 22, 1999 which letter responded to MRA's Request for Interpretation regarding the applicability of Bill 91-10 to the site and the requested zoning certificate.

If granted, the requested variances would allow the reclamation of the previously and currently mined areas of the subject site through the use of rubble fill material. The proposed activities will be performed under the provisions of a Solid Waste Disposal Permit issued by the Maryland Department of the Environment and are consistent with the Harford County Solid Waste Plan.

MRA specifically preserves its right to argue that certain provisions of the Harford County Zoning Code can not be applied to the proposed activity inasmuch as the Harford County Council granted approval to the proposed Site Plan on November 14, 1989 and the Maryland Department of the Environment issued a Solid Waste Disposal Permit to the proposed rubble landfill in 1992 and has renewed it continuously since that time.

MRA is requesting a variance from the requirements of Section 267-40.1 to permit operation of the landfill on a site of less than 100 acres and with a buffer of less than 1000 ft. from surrounding residential and institutional uses and less than 500 feet from a floodplain. MRA proposes to develop the site as shown in the Site Plan approved by the County Council on November 14, 1989. (MRA is not seeking a variance from Section 267-40.1 (E) because Harford County has

taken the position that the height restrictions set forth there do not preclude the development of the landfill and that no variance is thus necessary.)

MRA is requesting a variance from the requirements of Sections 267-28. C, to permit the disturbance of the 30-foot bufferyard. MRA proposes to provide the buffer screening shown in the Site Plan approved by the County Council on November 14, 1989.

MRA is requesting a variance from Section 267-28D(4) to permit disturbance of the 200-foot buffer from adjoining property lines. MRA proposes to develop the 200-foot buffer described in the Site Plan approved by the County Council on November 14, 1989.

MRA is requesting a variance from Section 267-28 (E) to permit disturbance within the 75 foot Historic Landmark buffer.

MRA is also requesting a variance under the provisions of Section 267-41. D (6) from the requirements of 267-41.D (2)(c), (3)(b), (5)(e) to permit the operation of a rubble landfill within the NRD and the disturbance of the buffer within the NRD to allow development of the rubble landfill as shown in the Site Plan approved by the County Council on November 14, 1989.

MRA is seeking variances that will permit disturbance of the site and the operation of a rubble fill in the areas shown on Exhibit A.

### **Justification**

The subject site is unique among the parcels in Harford County by virtue of the facts that:

- It has been the site of sand and gravel extraction for at least 50 years.
- The small portion of the mined area that has been reclaimed has used concrete, stumps and similar rubble material as fill.
- The site received a permit from the Maryland Department of the Environment for rubble fill operations in 1992, and is shown in the Harford County Solid Waste Plan as a rubble landfill.
- The prior mining operations have created unusual topographic conditions that require the reclamation on the site.
- A public hearing by the Harford County Council on the Site Plan for the proposed rubble fill was held on November 7, 1989 when the amendment to the Solid Waste Plan was considered.
- The Harford County Council approved the Site Plan for the Gravel Hill Rubble Fill on November 14, 1989 subject to 27 conditions including a "landscape buffer zone" of 200 feet. (See letter dated November 16, 1989 to John C. Lawther, MDE).
- MRA received a solid waste disposal permit from the Maryland Department of the Environment for rubble fill operations in 1992.

- The prior mining operations have created unusual topographic conditions that require the reclamation of the boundary areas on the site before they can be used as the buffer area required by the County Council.

Further, the application of the increased buffer provisions of Bill 91-10 to MRA's proposed rubble landfill as shown on the Site Plan approved by the Harford County Council in 1989 eliminates nearly all the available space for depositing rubble and conducting a rubble landfill on the property.

The extensive requirements of COMAR applicable to this rubble fill and the extensive conditions imposed by MDE will assure that the use of this site will have no permanent detrimental effects upon the natural resources or waters of the State. These same regulations will provide that the rubble fill operation will not adversely affect the Natural Resource District.

**JAMES M. HARKINS**

HARFORD COUNTY EXECUTIVE

**JOHN J. O'NEILL, JR.**

DIRECTOR OF ADMINISTRATION



**J. STEVEN KAH-ZIEGLER**  
DIRECTOR OF PLANNING & ZONING

## HARFORD COUNTY GOVERNMENT

### Department of Planning and Zoning

May 12, 2005

### STAFF REPORT

### BOARD OF APPEALS CASE NO. 5458

APPLICANT/OWNER: Maryland Reclamation Associates, Inc.  
Post Office Box 451, Churchville, Maryland, 21028

REPRESENTATIVE: William D. Hooper, Jr.  
Hooper and Jacobs, LLC  
Post Office Box 451, Churchville, Maryland, 21028

James Nolan, Council,  
Baradel, Kosmerl and Nolan  
125 West Street, P.O. Box 2289, Annapolis, Maryland 21404

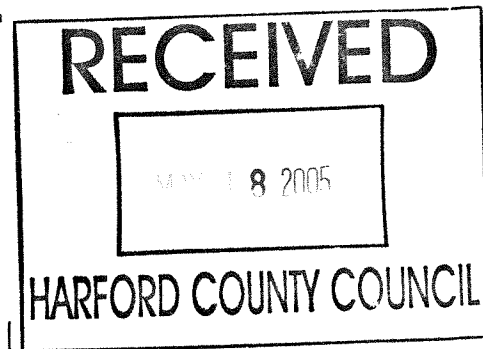
LOCATION: South side of Gravel Hill Road, 0.7 miles south of Maryland Route 155 and approximately 0.6 miles east of Maryland Route 462.  
Tax Map: 44 / Grid: 2A and 2B / Parcels: 439 and 457  
Election District: Second (2)

ACREAGE: 68.33 acres

ZONING: AG/Agricultural

DATE FILED: October 29, 2004

HEARING DATES: May 25, June 1, June 13, June 20, June 22, June 27, June 29,  
August 15, August 29, August 31, 2005



*Preserving our values, protecting our future*

MY DIRECT PHONE NUMBER IS (410) 638-3103

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410-638-3000 • 410-879-2000 • TTY 410-638-3086 • [www.co.ha.md.us](http://www.co.ha.md.us)

*This document is available in alternative format upon request.*

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**APPLICANT'S REQUEST and JUSTIFICATION:**

See ATTACHMENT 1.

**CODE REQUIREMENTS:**

The Applicant is requesting variances from Section 267-28C to permit the disturbance of the 30-foot buffer yard; Section 267-28D(4); and E to permit disturbance within the 200-foot buffer from adjoining property lines; and to permit disturbance within the 75-foot Historic Landmark buffer; Section 267-40.1 A, B, C and D to permit operation of a rubble landfill on less than 100 acres; and to permit operation of a landfill without satisfying buffer requirement; and to permit the deposit of solid waste less than 500-feet from the Floodplain District; and to permit the disturbance of the 100-foot buffer from a residential or institutional building; Section 267-41.D(2)(c); (3)(b); (5)(e); (6) to permit the use of a landfill within the Natural Resource District (NRD); to permit the disturbance of the NRD buffer; and the disturbance of the minimum 75-foot wetlands buffer in the AG/Agricultural District, requiring approval by the Board of Appeals.

Enclosed with the report is a copy of Section 267-28C of the Harford County Code (Attachment 2).

Section 267-28D(4) of the Harford County Code reads:

*(4) Sanitary landfill requirements.*

- (a) An undisturbed buffer area shall be maintained between the fill area and adjoining properties. The undisturbed buffer area shall be designed to adequately screen the landfill activities from the view of the adjoining properties. The undisturbed buffer area shall be a minimum of 200 feet from adjoining property lines. The distance shall be determined by the County Council after site plan is developed by the Departments of Planning and Zoning and Public Works. The site plan shall consider and address the topography of the area, the ability to effectively screen the landfill area and such other factors as the Department of Planning and Zoning and Public Works and County Council deem relevant in conformity with Section 267-9I, Limitations, guides and standards.*
- (b) The Department of Public Works shall cause, prior to submission of the site plan to the County Council, a notice to be published once a week for 2 consecutive weeks in 2 newspapers of general circulation in the County. The notice shall identify the location of the site, the acreage and a physical description of the site.*

Section 267-28E of the Harford County Code reads.

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- E. *[Added by Bill No. 94-73] If a proposed use will be on property that is adjacent to a structure designated as a historic landmark by the Historic Preservation Commission, and if the proposed use will be located within 500 feet of the historic landmark, the proposed use shall have a buffer and landscaping in accordance with this subsection. The Department shall determine the required width and landscaping of the buffer. The width shall be at least 10-feet and not more than 75-feet, and the landscaping shall be one of the alternatives established by Subsection D of this section. Before determining the required width and the landscaping alternative to be used, the Department shall obtain recommendation from the Historic Preservation Commission. In forming its recommendation, the commission shall consider the nature and extent of the proposed use, the degree of compatibility of the proposed use and the historic landmark, the extent to which the buffer will help preserve the character of the historic landmark, the size of the property on which the proposed use will be located, the distance of the proposed use from the historic landmark, and the size of the property on which the historic landmark is located. The Department shall require the buffer width and landscaping recommended by the commission unless the Department finds, based on written reasons, that the recommendation of the Commission was not supported by competent or material evidence or was arbitrary or capricious.*

Section 267-40.1A; B; C and D read as follows:

*267-40.1 Rubble landfills. [Added by Bill No. 91-10; 97-12]*

*A Rubble landfill may be permitted in the AG, RR, R, R1, R2, R3, R4, RO, VR, B, B1, B2, B3, CI, L1 and GI Districts only if:*

- A. *The site is at least one hundred (100) acres in size;*
- B. *The site has a buffer that satisfies the requirements of Section 267-28D(4) of this chapter;*
- C. *All areas in which solid waste is deposited are at least five hundred (500) feet from the Floodplain District established by Chapter 131 of this Code;*
- D. *Notwithstanding Section 267-28D(4) of this Chapter, all areas in which solid waste is deposited are at least one thousand (1000) feet from any lawfully permitted off-site residential or institutional building;*
- E. *The rubble landfill is contoured to substantially conform to the original grade of the site and, in any case, the height of the landfill does not exceed the height of the tallest structure or natural feature within two thousand five hundred (2,500) feet of the parcel.*

Sections 267-41D(2)(c); (3)(b); (5)(e); (6) of the Harford County Code read:

- (2) *Application. The Natural Resources District shall apply to the following environmental features:*



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- (c) *Streams: the following streams, including Broad Creek, Bynum Run, Carsins Run, Deer Creek, Grays Run, Ahha Branch, Herring Run, Little Gunpowder Falls, Rock Run, Peddler Run, Swan Creek, Winters Run and their tributaries, as identified on the Harford County Hydrology Map (1976 Revised Maryland Geological Survey Base Map 1:62,500). Tributaries to the above streams, which drain a sub-basin of more than four hundred (400) acres, are included in the Natural Resources District stream designation. The acreage of the sub-basin is determined at the point of confluence with another stream identified on the County Hydrological Map. The Natural Resources District area for stream protection shall be a minimum distance of one hundred fifty (150) feet on both sides of the centerline of the stream or fifty (50) feet beyond on the one hundred (100) year floodplain, whichever is greater, and along their tributaries for a minimum of seventy-five (75) feet on both sides of the center line of the tributary. The Natural Resources District boundaries under this provision shall include the buffer requirements of Subsection D(4)(b) and 5(b) of this section.*

*D(4)(b) and (5)(b) as referenced above:*

- (4)(b) *Forestry. Commercial timber operations shall be permitted, provided that Forest Management Plan (FMP) is approved by the Maryland Forest, Park and Wildlife Service and the Department of Planning and Zoning. Along streams, a buffer of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. The restriction on harvesting within this buffer maybe waived, provided that a site -specific Buffer Management Plan is prepared and approved as an amendment to the Forest Management Plan (FMP). The Buffer Management Plan shall address potential water-quality impacts and shall include a minimum undisturbed buffer designed according to site characteristics. Trees within the buffer may also be harvested to remove diseased, insect-damaged or fire-damaged trees in order to salvage the same or reduce potential stream blockage due to fallen timber. Landowners are exempted from the Forest Management Plan (FMP) requirement when timber is harvested for personal use only. Forestry operations within the urban residential districts (R1, R2, R3, or R4) shall be required to meet the conservation requirements under Subsection D(5) below.*
- (5)(b) *Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designated in such a manner to preserve large contiguous tracts of woodland. Clearing of woodland shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damage or fire-damaged trees to salvage the same or reduce*

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*potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.*

(3) *Use restrictions. The following uses shall be prohibited:*

(b) *Deposit or landfills of refuse or solid or liquid waste, except manure. Acceptable fill permitted by the United States Army Corps of Engineers may be used for stream bank erosion control.*

(5) *Conservation requirements. The following conservation measures are required within this district.*

(e) *Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.*

(6) *Variances. The Board may grant a variance to Subsection D(3), (4), or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.*

Section 267-9I of the Harford County Code entitled Limitation, Guides and Standards will be discussed in detail later in the report.

### **LAND USE and ZONING ANALYSIS:**

#### **Land Use – Master Plan:**

The subject property is located in southeast Harford County, on the south side of Gravel Hill Road, east of Paradise Road. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 3 and 4).

The subject property is located outside of the Development Envelope. This area is designated as Agricultural. The Natural Features Map reflects Agricultural Preservation Easements and Districts, and stream systems. The subject property is designated as Agricultural which is defined by the 2004 Master Plan as:

**Agricultural** – Areas where agriculture is the primary land use, but where developments rights are available. Residential development is possible at a density of 1.0 dwelling unit for every 10 acres. Commercial uses within this area are intended to serve the agriculture industry or residents of the area while maintaining the character of the surrounding countryside.

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Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 5 and 6).

### Land Use – Existing:

The surrounding area includes residential and agricultural uses. Many of the existing residential uses including Webster Village, were created before enactment of zoning in 1957. There are active agricultural uses as well as large areas of woodland. The county-owned Gravel Hill Park is located to the west of the subject property along the north side of Gravel Hill Road. Enclosed with the report is a copy of the aerial photograph (Attachment 7).

The subject parcel is an irregularly shaped property, consisting of approximately 68.33 acres. The topography of the site varies due to the prior use of the site for a sand and gravel mining operation. As the mining operation ceased years ago, much of the open areas of the property have shown signs of natural regeneration of trees and shrubs. The immediate surrounding land uses include individual dwellings along the road frontage and St. James A.M.E church and cemetery. The cemetery is designated as a County Historic Landmark. Most of the area is densely wooded. A copy of the topography map along with an enlargement of the aerial photograph is enclosed with the report (Attachments 8 and 9).

### Zoning:

The zoning classifications in the area are consistent with intent of the 2004 Master Plan as well as the existing land uses. The predominant zoning classification is AG/Agricultural. The community to the north of the subject site is zoned RR/Rural Residential with some small areas of B1/Neighborhood Business District. The zoning patterns in this area of the County have remained fairly constant since the original 1957 zoning. The subject property is zoned AG/Agricultural as shown on the enclosed copy of the zoning map (Attachment 10)

It appears that a portion of the property has been submitted as a request for rezoning under the County's comprehensive zoning review. The owners were listed as Pinhas Heyn and Gail C. Heyn. The correct ownership of this property needs to be clarified by the Applicant.

### History

The Applicant initiated the process for approval of a rubble landfill on the subject property in 1989, including a request to Harford County for inclusion in the Solid Waste Management Plan and an application to the Maryland Department of the Environment for a refuse disposal permit. In 1990, the Applicant acquired the property as two (2) parcels (Tax Map 44, parcels 457 and 439) totaling 68.823 acres. At that time, the Zoning Code permitted rubble landfill and sanitary landfills in the Agricultural Zoning District, provided that a 200 foot buffer was established and the site plan was approved by the County Council.

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In 1991, the County Council enacted Council Bill 91-10 as emergency legislation. This bill specifically defined rubble landfills and established additional requirements for these landfills. These requirements included a minimum parcel size of 100 acres, a minimum setback of 500 feet from a regulated floodplain and 1,000 feet from any lawfully permitted off-site residential or institutional building, and a maximum height, which does not exceed the tallest structure or natural feature within 2,500 feet. The buffer and site plan approval requirements of Section 267-28D(4) were retained. This legislation specifically exempted rubble landfill operations, which had obtained a State Refuse Disposal Permit prior to February 12, 1991 and contained a minimum of 100 acres.

In letters dated November 15, 1996 and December 17, 1996 (Attachments 11A-B), the Applicant requested a formal interpretation from Arden Holdredge, Director of Planning and Zoning, in her capacity as Zoning Administrator. In a letter dated December 5, 1996 from Jefferson Blomquist, the County notified the Applicant of which issues would be treated as an interpretation by the Zoning Administrator. (Attachment 12) In accordance with the provisions of Section 267-7B, the property was posted and the adjacent property owners notified. The Zoning Administrator's interpretation regarding applicability of Section 267-40.1 was issued in a letter dated February 18, 1997. (Attachment 13) It was found that the provision of Section 267-40.1 of the Harford County Code applied to the subject property. The Applicant submitted an appeal of this interpretation on March 7, 1997, within the twenty (20) day appeal period. (Board of Appeals Case No. 4702)

The Applicant requested an interpretation of the Zoning Administrator, pursuant to Section 267-7(5) of the Code, in a letter dated December 10, 1998. (Attachment 14) The Director of Planning and Zoning, Joseph Kocy, responded to Questions 1 and 5 in a letter dated February 22, 1999. (Attachment 15)

Upon joint agreement of the Applicant, County and Interveners, Questions 2, 3 & 4 of the Applicant's request were answered in a letter dated October 4, 2000 by Joseph Kocy, Director of the Department of Planning and Zoning. (Attachment 16)

The Applicant filed an application for a zoning certificate to operate a rubble landfill on the subject property on December 23, 1998. Joseph Kocy, Director of Planning and Zoning, denied the zoning certificate since the request did not comply with the standards of Section 267-40.1, 267-28C, 267-28D(4) and the Natural Resource District provision of Section 267-41.

The Hearing Examiner issued a combined decision on Cases 4702 and 4913 approving the decision of the Zoning Administrator on April 2, 2002. (Attachment 17) The County Council, sitting as the Board of Appeals, approved the Hearing Examiners decision on June 11, 2002. (Attachment 18) The Applicant filed an appeal of the decision of the Board of Appeals to the Circuit Court. On October 7, 2003, the Court affirmed the decision of the Hearing Examiner/Board of Appeals. (Attachment 19) Subsequently, the Applicant filed an appeal to the Court of Special Appeals which was "grabbed" by the Court of Appeals. The Court of Appeals

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on July 30, 2004 ruled that MRA failed to exhaust its administrative remedies and it vacated the Circuit Court's opinion and ordered the case remanded to the Circuit Court to stay appellants' petition for judicial review. (Attachment 20)

### **SUMMARY:**

The Applicant is requesting variances from Section 267-28C to permit the disturbance of the 30-foot buffer yard; Section 267-28D(4); and E to permit disturbance within the 200-foot buffer from adjoining property lines; and to permit disturbance within the 75-foot Historic Landmark buffer; Section 267-40.1 A, B, C and D to permit operation of a rubble land fill on less than 100 acres; and to permit operation of a landfill without satisfying buffer requirement; and to permit the deposit of solid waste less than 500-feet from the Floodplain District; and to permit the disturbance of the 100-foot buffer from a residential or institutional building; Section 267-41.D(2)(c); (3)(b); (5)(e); (6) to permit the use of a landfill within the Natural Resource District (NRD); to permit the disturbance of the NRD buffer; and the disturbance of the minimum 75-foot wetlands buffer in the AG/Agricultural District, requiring approval by the Board of Appeals.

Sections 267-41D(2)(c); (3)(b); (5)(e); (6):

(2) *Application. The Natural Resources District shall apply to the following environmental features:*

(c) *Streams: the following streams, including Broad Creek, Bynum Run, Carsins Run, Deer Creek, Grays Run, Haha Branch, Herring Run, Little Gunpowder Falls, Rock Run, Peddler Run, Swan Creek, Winters Run and their tributaries, as identified on the Harford County Hydrology Map (1976 Revised Maryland Geological Survey Base Map 1:62,500). Tributaries to the above streams, which drain a sub-basin of more than four hundred (400) acres, are included in the Natural Resources District stream designation. The acreage of the sub-basin is determined at the point of confluence with another stream identified on the County Hydrological Map. The Natural Resources District area for stream protection shall be a minimum distance of one hundred fifty (150) feet on both sides of the centerline of the stream or fifty (50) feet beyond on the one hundred (100) year floodplain, whichever is greater, and along their tributaries for a minimum of seventy-five (75) feet on both sides of the center line of the tributary. The Natural Resources District boundaries under this provision shall include the buffer requirements of Subsection D(4)(b) and 5(b) of this section.*

There are two streams on the western boundary of the property that traverse this site. These streams are tributaries of Swan Creek. The one stream that runs north to south is recognized as a tributary which drains a sub-basin of more than 400 acres. This stream requires a minimum buffer of 150-feet from the centerline of the stream or 50-feet beyond the 100 year floodplain. The 150-foot buffer and the 50-foot floodplain buffer are not shown on the Applicant's site plan.

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There is also a smaller tributary stream that flows east to west located between disposal areas "D" and "E" shown on the Applicant's site plan that is a tributary to the above referenced stream. This stream has a minimum buffer of 75-feet from the centerline of the stream or 75-feet from its associated non-tidal wetlands. The plan proposes impacts to the required stream buffer associated with disposal areas "B", "D" and "E" as well as a crossing of the stream. (see Attachment 21)

There is a smaller tributary to Swan Creek that runs north to south that is located along the eastern edge of the property. This stream is not recognized as a stream which drains a sub-basin of more than 400 hundred acres and does not have any 100-year floodplain associated with it where it traverses the property. This stream requires a 75-foot buffer measured from the centerline. The applicant does not propose any disturbance within the 75-foot buffer to this stream, however there are wetlands associated with this stream that require a 75-foot buffer that the applicant has requested a variance to disturb. Those impacts will be discussed under Section 267-41D(5)(e).

*D(4)(b) and (5)(b) as referenced above:*

- (4)(b) Forestry. Commercial timber operations shall be permitted, provided that Forest Management Plan (FMP) is approved by the Maryland Forest, Park and Wildlife Service and the Department of Planning and Zoning. Along streams, a buffer of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. The restriction on harvesting within this buffer maybe waived, provided that a site -specific Buffer Management Plan is prepared and approved as an amendment to the Forest Management Plan (FMP). The Buffer Management Plan shall address potential water-quality impacts and shall include a minimum undisturbed buffer designed according to site characteristics. Trees within the buffer may also be harvested to remove diseased, insect-damaged or fire-damaged trees in order to salvage the same or reduce potential stream blockage due to fallen timber. Landowners are exempted from the Forest Management Plan (FMP) requirement when timber is harvested for personal use only. Forestry operations within the urban residential districts (R1, R2, R3, or R4) shall be required to meet the conservation requirements under Subsection D(5) below.*
- (5)(b) Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designated in such a manner to preserve large contiguous tracts of woodland. Clearing of woodland shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damage or fire-damaged trees to salvage to same or reduce*

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*potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.*

The Applicant is proposing to remove forest and vegetation from the required stream buffers for disposal areas "B", "D", and "E".

(3) *Use restrictions. The following uses shall be prohibited:*

(b) *Deposit or landfills of refuse or solid or liquid waste, except manure. Acceptable fill permitted by the United States Army Corps of Engineers may be used for stream bank erosion control.*

The Applicant is requesting a variance to operate a rubble landfill within the Natural Resource District as shown on the Applicant's site plan.

(5) *Conservation requirements. The following conservation measures are required within this district.*

(e) *Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.*

The Applicant has requested variances from this section of the Code. Specifically, the Applicant has proposed disturbances to non-tidal wetland buffers in disposal areas "A", "B", "D" and "E" as shown on the Applicant's site plan.

(6) *Variances. The Board may grant a variance to Subsection D(3), (4), or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.*

The Applicant has requested variances to impact the Natural Resources District with the development of a Rubble landfill. Those impacts are specifically identified on the applicant's site plan. The applicant's justification to impact these areas is that the areas have been the site of a sand and gravel extraction for at least 50 years. We have reviewed the aerial photography records since 1957 (Attachments 22, 23, 24, 25 & 26). The photographs indicate that the sand and gravel operations were concentrated in the center of the site with little to no activity in the areas of Natural Resource District that are proposed to be impacted in the applicant's site plan. The record clearly indicates that there has been no activity in the areas of impact associated with disposal area 'A', located in the eastern portion of the site and very little impact to the other areas of Natural Resource District, for the past 50 years. This is also evident from an on-site inspection of the property. Most of the site is covered with mature forest. The 1957 aerial photograph indicated that the sand and gravel operation did impact some of the areas associated

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with proposed disposal areas 'B' and 'D'. However, these areas have also naturally regenerated into mature forested areas.

These buffer areas contain a good forest structure that is relatively healthy. These areas provide a valuable buffer to the existing streams and their associated non-tidal wetlands. The applicant has not submitted an environmental impact analysis or alternatives analysis. The applicant has not demonstrated how the impacts will not adversely affect the Natural Resource District, nor have they proposed any mitigation for the proposed impacts. The plan also does not properly identify the 150 buffer required pursuant to section 267-41D(2)(c) of the Code.

The Department recommends denial of the requested variances pursuant to section 267-41 of the code. The Department finds that the removal of forest and the location of fill within the Natural Resource District will create an adverse impact.

Enclosed with the report is a copy of Section 267-28C of the Harford County Code (see Attachment 2).

The Applicant has requested a variance to permit disturbance within the 30 foot buffer yard. It appears that grading of the property will come as close as 10 feet to the adjacent properties. This disturbance would adversely impact the adjacent properties.

Section 267-28D(4):

(4) *Sanitary landfill requirements.*

(a) *An undisturbed buffer area shall be maintained between the fill area and adjoining properties. The undisturbed buffer area shall be designed to adequately screen the landfill activities from the view of the adjoining properties. The undisturbed buffer area shall be a minimum of 200 feet from adjoining property lines. The distance shall be determined by the County Council after a site plan is developed by the Departments of Planning and Zoning and Public Works. The site plan shall consider and address the topography of the area, the ability to effectively screen the land fill area and such other factors as the Department of Planning and Zoning and Public Works and County Council deem relevant in conformity with Section 267-9I, Limitations, guides and standards.*

The Applicant's site plan shows disposal areas A, B and E within the 200-foot buffer. The aerial photograph shows the property as being wooded. Based on the locations of the disposal areas a majority of the property would be cleared. It is not realistic to expect that the disposal areas could be properly screened as required by Code. The lack of appropriate screening will adversely impact the adjoining properties.

Section 267-9I of the Harford County Code will be addressed later in the report.



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- (b) *The Department of Public Works shall cause, prior to submission of the site plan to the County Council, a notice to be published once a week for 2 consecutive weeks in 2 newspapers of general circulation in the County. The notice shall identify the location of the site, the acreage and a physical description of the site.*

This Section assumes that the site is a proposed county facility and therefore is not applicable to the subject case.

Section 267-28E:

- E. *[Added by Bill No. 94-73] If a proposed use will be on property that is adjacent to a structure designated as a historic landmark by the Historic Preservation Commission, and if the proposed use will be located within 500 feet of the historic landmark, the proposed use shall have a buffer and landscaping in accordance with this subsection. The Department shall determine the required width and landscaping of the buffer. The width shall be at least 10-feet and not more than 75-feet, and the landscaping shall be one of the alternatives established by Subsection D of this section. Before determining the required width and the landscaping alternative to be used, the Department shall obtain recommendation from the Historic Preservation Commission. In forming its recommendation, the commission shall consider the nature and extent of the proposed use, the degree of compatibility of the proposed use and the historic landmark, the extent to which the buffer will help preserve the character of the historic landmark, the size of the property on which the proposed use will be located, the distance of the proposed use from the historic landmark, and the size of the property on which the historic landmark is located. The Department shall require the buffer width and landscaping recommended by the commission unless the Department finds, based on written reasons, that the recommendation of the Commission was not supported by competent or material evidence or was arbitrary or capricious.*

One of the adjacent properties is owned by the St. James A. M. E. church. The cemetery located on the property is designated as a County landmark (St. James AME – HA 1591). The applicant has requested a variance from the 75 foot buffer. The limit of disturbance for the proposed rubble landfill is located within 10 feet of this property.

The church and graveyard have an illustrious history, beginning in the 1800's as a church for a freedman's community. The cemetery has many gravestones and irregular markers, dating as far back as 1834. The cemetery is located around the church with the majority of the gravestones and markers located to the rear of the site.

The Department finds that the approval of the proposed variance would adversely impact the Historic Landmark.

Section 267-40.1A; B; C and D:

*267-40.1 Rubble landfills. [Added by Bill No. 91-10; 97-12]*

*A Rubble landfill may be permitted in the AG, RR, R, R1, R2, R3, R4, RO, VR, B, B1, B2, B3, CI, L1 and GI Districts only if:*

The subject property is zoned AG/Agricultural.

*A. The site is at least one hundred (100) acres in size;*

The subject property is only 68.33 acres in size and does not meet the minimum requirement. The Applicant is requesting a variance from the required acreage.

*B. The site has a buffer that satisfies the requirements of Section 267-28D(4) of this chapter;*

The applicant has requested a variance from the minimum 200 foot undisturbed buffer. In fact, the site plan shows that a majority of the 200 foot minimum buffer would be disturbed.

*C. All areas in which solid waste is deposited are at least five hundred (500) feet from the Floodplain District established by Chapter 131 of this Code;*

There is the floodplain associated with the stream located along the western boundary of the applicant's property. The applicant is requesting a variance to be within 500 feet of the floodplain. (Attachment 27)

There are streams and tributaries along both the eastern and western sides of the property that flow into Swan Creek. The Site Plan shows the streams and wetland buffers that are impacted by Disposal Areas "A", "B", "D" and "E".

*D. Notwithstanding Section 267-28D(4) of this Chapter, all areas in which solid waste is deposited are at least one thousand (1000) feet from any lawfully permitted off-site residential or institutional building;*

There are several residential dwellings and an institutional building within 1000 foot of the fill area. The Applicant has requested a variance from this request. The Department finds that the dwellings and institutional uses located within the buffer would be adversely impacted if the requested variance were approved.

Section 267-9I:

*(1) The number of persons living or working in the immediate area.*

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The neighborhood is located in a rural area of the County. Many of the dwellings are older homes constructed prior to 1957. Several of these homes sit very close to Gravel Hill Road. There is a historic church and cemetery and dwellings on small lots located adjacent to the property. Because the Applicant cannot meet any of the buffer requirements, these properties will be significantly impacted by the proposed rubblefill.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The subject property is located on the south side of Gravel Hill Road, which is a minor paved County road. Many of the older dwellings along Gravel Hill Road are located very close to the roadway. The truck traffic that will be generated from this use will impact these homes. Also, because Gravel Hill Road is a small winding road, the additional truck traffic may adversely impact residents' ability to enter or exit their properties.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed use can not meet any of the Code requirements for the intended use. The proposal is not appropriate at this location.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The rubblefill activity and truck traffic will have an adverse impact on the surrounding community. These activities will come as close as 10 to 20 feet from some of the adjacent residential properties and the church property. Without adequate buffers as established by the Code, there will be no way to mitigate the effects on the surrounding community.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Level and Aberdeen Volunteer Fire Departments will provide fire and emergency protection. The property would be served by private well and septic system.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

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It is the opinion of the County that the proposal is not consistent with generally accepted engineering and planning principles and practices. The site is located on a winding narrow county road. There are numerous residential dwellings and an institutional use in close proximity to the site.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

The proposed use surrounds a small church and cemetery which is a County historic landmark. The proposal would adversely impact this property.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed rubblefill is not consistent with the intent of the Master Plan. This site is not consistent with the Harford County Ten Year Solid Waste Management Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The Applicant is requesting approval to disturb the Natural Resource District located on this property. The Department finds that the proposed variances would adversely impact these natural features. The Department received comments from the Maryland Department of the Environment Water Management administration. The letter states that impacts to nontidal wetlands, the nontidal wetland buffers, and waters of the State (including the 100 year floodplain) require authorization by the Maryland Department of the Environment. The Applicant should avoid and minimize impacts to these areas to the greatest extent practicable. (Attachment 28)

- (10) *The preservation of cultural and historic landmarks.*

As stated earlier in the report the subject property abuts a County historic landmark (The St. James A. M. E. church and cemetery) on 3-sides. The Applicant's proposal would result in clearing, grading and the deposit of rubble around all three sides of this property. This request would significantly impact this historic property.

### Section 267-11:

Variances of this nature may be approved by the Board of Appeals pursuant to Section 267-11 of the Harford County Code, provided it finds by reason of the uniqueness of the property or topographical conditions that literal enforcement of the Code would result in practical difficulty and undue hardship. Further, the applicant must show that the request will not be substantially

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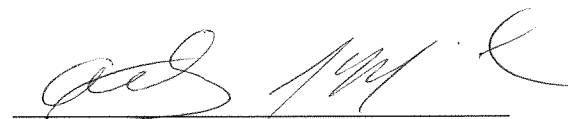
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detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.

**RECOMMENDATION:**

The Department finds that the subject property is not an appropriate location for the proposed rubblefill. The requested variances, if approved, would have an adverse impact on the neighborhood and the intent of the code. Therefore, the Department recommends denial of the applicant's request.

  
Dennis J. Sigler, Coordinator  
Zoning & Board of Appeals Review

  
Anthony S. McClune, AICP  
Deputy Director, Planning and Zoning

DJS/ASM/jf